

# House Study Bill 761

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON PAULSEN)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to civil actions and the foreclosure of real  
2 estate mortgages, and providing fees.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 5463YC 81  
5 rh/je/5

PAG LIN

1 1 Section 1. Section 602.8102, subsection 113, Code  
1 2 Supplement 2005, is amended to read as follows:  
1 3 113. When a judgment of foreclosure is entered, file an  
1 4 instrument with the recorder acknowledging the satisfaction as  
1 5 provided in ~~sections 655.4 and section~~ 655.5.  
1 6 Sec. 2. Section 615.1, Code 2005, is amended to read as  
1 7 follows:

1 8 615.1 EXECUTION ON CERTAIN JUDGMENTS PROHIBITED.

1 9 ~~From and after January 1, 1934, no A~~ judgment in an action  
1 10 for the foreclosure of a real estate mortgage, deed of trust,  
1 11 or real estate contract upon property which at the time of  
1 12 judgment is either used for an agricultural purpose as defined  
1 13 in section 535.13 or a one-family or two-family dwelling which  
1 14 is the residence of the mortgagor, or in any action on a claim  
1 15 for rent or judgment assigned by a receiver of a closed bank  
1 16 or rendered upon credits assigned by the receiver of a closed  
1 17 bank when the assignee is not a trustee for depositors or  
1 18 creditors of the bank, the reconstruction finance corporation  
1 19 or any other federal governmental agency to which the bank or  
1 20 the receiver is or may be indebted shall not be enforced and  
1 21 no execution shall be issued thereon and no force or vitality  
1 22 ~~given thereto~~ for any purpose other than as a setoff or  
1 23 counterclaim after the expiration of a period of two years,  
1 24 ~~exclusive of any time during which execution on the judgment~~

1 25 ~~was stayed pending a bankruptcy action,~~ from the entry  
1 26 thereof. As used in this section, "mortgagor" means a  
1 27 mortgagor or a borrower executing a deed of trust as provided  
1 28 in chapter 654 or a vendee of a real estate contract.

1 29 Sec. 3. Section 615.2, Code 2005, is amended to read as  
1 30 follows:

1 31 615.2 REVIVAL OF CERTAIN JUDGMENTS PROHIBITED.

1 32 ~~After January 1, 1934, no An~~ action or proceedings shall  
1 33 not be brought in any court of this state for the purpose of  
1 34 renewing or extending such judgment ~~or prolonging the life~~  
1 35 ~~thereof.~~ Provided, however, that nothing herein shall prevent  
2 1 the continuance of such judgment in force for a longer period  
2 2 by the voluntary written stipulation of the ~~parties judgment~~  
2 3 ~~creditor and the equitable titleholders, filed in said cause~~  
2 4 ~~the action or proceedings.~~

2 5 Sec. 4. Section 624.23, Code 2005, is amended by adding  
2 6 the following new subsection:

2 7 NEW SUBSECTION. 7. If a case file has been sealed by the  
2 8 court, or if by law the court records in a case are not  
2 9 available to the general public, any judgments entered in the  
2 10 case shall not become a lien on real property until the  
2 11 identity of the judgment creditor and the amount of the  
2 12 judgment, as well as any payments made on the judgment, become  
2 13 public record.

2 14 Sec. 5. Section 626.78, Code 2005, is amended to read as  
2 15 follows:

2 16 626.78 NOTICE TO DEFENDANT.

2 17 If the debtor is in actual occupation and possession of any  
2 18 part of the land levied on, the officer having the execution

2 19 shall, at least twenty days previous to such sale, serve the  
2 20 debtor with written notice, stating that the execution is  
2 21 levied on said land, and mentioning the time and place of  
2 22 sale, which notice shall be served in the manner provided by  
2 23 rule of civil procedure 1.305(1). However, upon the filing of  
2 24 an affidavit that the debtor is intentionally evading service  
2 25 of process or otherwise cannot be served despite repeated  
2 26 attempts, the notice may be served by placing the notice in a  
2 27 plain opaque envelope, addressed to the defendant and marked  
2 28 personal and confidential, and by affixing the envelope to a  
2 29 main entrance of the premises subject to sale.

2 30 Sec. 6. Section 626.80, unnumbered paragraph 2, Code 2005,  
2 31 is amended to read as follows:

2 32 The sheriff shall receive and give a receipt for a sealed  
2 33 written bid submitted prior to the public auction. The  
2 34 sheriff may require all sealed written bids to be accompanied  
2 35 by payment of any fees required to be paid at the public  
3 1 auction by the purchaser, to be returned if the person  
3 2 submitting the sealed written bid is not the purchaser. The  
3 3 sheriff shall keep all written bids sealed until the  
3 4 commencement of the public auction, at which time the sheriff  
3 5 shall open and announce the written bids as though made in  
3 6 person. A junior creditor who has appeared in the foreclosure  
3 7 may submit a written bid, which shall include a facsimile  
3 8 number or electronic mail address where the junior creditor  
3 9 can be notified of the results of the sale. However, if upon  
3 10 being notified of the results of the sale, the junior creditor  
3 11 does not pay the bid in certified funds within forty-eight  
3 12 hours in the manner in which the sheriff directs in the  
3 13 notice, the junior creditor's bid shall be deemed cancelled  
3 14 and the sheriff shall certify the next highest bidder as the  
3 15 successful bidder of the sale.

3 16 Sec. 7. Section 654.2B, Code 2005, is amended to read as  
3 17 follows:

3 18 654.2B REQUIREMENTS OF NOTICE OF RIGHT TO CURE.

3 19 The notice of right to cure shall be in writing and shall  
3 20 conspicuously state the name, address, and telephone number of  
3 21 the creditor or other person to which payment is to be made, a  
3 22 brief identification of the obligation secured by the deed of  
3 23 trust or mortgage and of the borrower's right to cure the  
3 24 default, a statement of the nature of the right to cure the  
3 25 default, a statement of the nature of the alleged default, a  
3 26 statement of the total payment, including an itemization of  
3 27 any delinquency or deferral charges, or other performance  
3 28 necessary to cure the alleged default, and the exact date by  
3 29 which the amount must be paid or performance tendered and a  
3 30 statement that if the borrower does not cure the alleged  
3 31 default the creditor or a person acting on behalf of the  
3 32 creditor is entitled to proceed with initiating a foreclosure  
3 33 action or procedure. The A mortgagor who has been  
3 34 substantially prejudiced by the failure of the a mortgagee to  
3 35 provide notice of right to cure to comply with one or more  
4 1 which substantially complies with the provisions of this  
4 2 section is not a defense or claim in any action pursuant to  
~~4 3 this chapter and does not invalidate any procedure pursuant to~~  
~~4 4 chapter 655A, unless the person asserting the defense, claim,~~  
~~4 5 or invalidity proves that the person was substantially~~  
~~4 6 prejudiced by such failure may, by motion filed prior to the~~  
4 7 answer, request an additional thirty days in which to cure any  
4 8 outstanding defaults on the mortgage, other than costs  
4 9 incurred by the mortgagee as a part of the foreclosure. If  
4 10 the motion is granted, the court shall provide that upon  
4 11 timely cure, the foreclosure shall be dismissed without  
4 12 prejudice and costs shall be assessed against the mortgagee.  
4 13 Failure of the mortgagee to provide proper notice of the right  
4 14 to cure pursuant to chapter 655A shall be included in the  
4 15 service and filing of a rejection notice pursuant to section  
4 16 655A.6.

4 17 Sec. 8. NEW SECTION. 654.4A FUNDS RECEIVED DURING  
4 18 FORECLOSURE.

4 19 Unless a mortgagor attaches conditions to a payment made  
4 20 during foreclosure, the mortgagee shall apply any payments  
4 21 received during the foreclosure as provided in the mortgage  
4 22 loan agreement. Application of such payments shall not  
4 23 extinguish the mortgagee's right to continue the foreclosure  
4 24 in regard to any unpaid amounts.

4 25 Sec. 9. NEW SECTION. 654.9A RELEASE OF PRIOR LIENS BY  
4 26 BOND.

4 27 At any time prior to the court's decree, the plaintiff, or  
4 28 a person guaranteeing title of the plaintiff's mortgage, may  
4 29 post a bond with sureties to be approved by the clerk and

4 30 apply to the court to release the claim against the property  
4 31 of any person claiming a lien superior to that of the  
4 32 plaintiff in the property subject to foreclosure. The bond  
4 33 shall be in an amount not less than twice the amount of the  
4 34 claim, and notice of the bond and the court's order of release  
4 35 shall be served on the claimant. Unless the claimant has  
5 1 appeared in the foreclosure action, the service shall be by  
5 2 personal service. Unless the claimant files an action on the  
5 3 bond within twelve months from service of the notice, the  
5 4 claimant shall be barred from any further remedy. In a  
5 5 successful action on the bond, the court may award the  
5 6 claimant reasonable attorney fees.

5 7 Sec. 10. NEW SECTION. 654.15A NOTICE OF SALE TO JUNIOR  
5 8 CREDITORS.

5 9 A junior creditor may file and serve on the judgment  
5 10 creditor a request for notice of the sheriff's sale. Such  
5 11 notice shall include a facsimile number or electronic mail  
5 12 address where the creditor shall be notified of the sale. At  
5 13 least ten days prior to the date of sale, the attorney for the  
5 14 judgment creditor shall file proof of service of such notice.  
5 15 Upon motion filed within thirty days of the sale, the court  
5 16 may set aside a sale in which a junior creditor who requests  
5 17 notice is damaged by the failure of the sheriff or the  
5 18 judgment creditor to give notice pursuant to this section.

5 19 Sec. 11. NEW SECTION. 654.15B RIGHT TO INTERVENE ==  
5 20 NOTICE.

5 21 A lender may serve a nontitleholding claimant in a  
5 22 foreclosure action with notice in substantially the following  
5 23 form advising the claimant that the property that is the  
5 24 subject of the foreclosure action shall be foreclosed and  
5 25 describing the claimant's interest in the action and that  
5 26 unless such claimant intervenes in the foreclosure action such  
5 27 claimant shall lose the claimant's interest in the mortgaged  
5 28 property. Unless the claimant intervenes within thirty days  
5 29 of the service of notice, the court may adjudicate the  
5 30 claimant's rights against the property as if the claimant had  
5 31 been added as a defendant and default had been entered against  
5 32 the defendant. The notice prescribed by this section is as  
5 33 follows:

5 34 NOTICE OF PENDING FORECLOSURE

5 35 To: (Name of claimant)

6 1 Date: (Enter date)

6 2 Plaintiff has filed a foreclosure of mortgage against the  
6 3 property of (titleholder) located at (street address of  
6 4 property) which is legally described as (legal description).  
6 5 This foreclosure was filed as (Plaintiff v. Defendant), Case #  
6 6 ( ), in the Iowa District Court for ( ) County. You have  
6 7 an apparent interest in the property because (description of  
6 8 claimant's interest). If you desire to protect this interest,  
6 9 you have the right to intervene in the foreclosure action by  
6 10 filing an intervention with the clerk of court in ( )  
6 11 County. Unless you intervene in the foreclosure the  
6 12 foreclosure may eliminate any interest you have in the  
6 13 property but will not otherwise affect your rights. If you  
6 14 have any questions about this notice, contact your attorney.  
6 15 Whether or not you intervene, the foreclosure may have certain  
6 16 tax consequences to you about which you should consult your  
6 17 tax advisor.

6 18 \_\_\_\_\_  
6 19 Name, address, and telephone number of attorney representing  
6 20 plaintiff.

6 21 Sec. 12. NEW SECTION. 654.17 RESCISSION OF FORECLOSURE.

6 22 At any time prior to the recording of the sheriff's deed,  
6 23 the judgment creditor or a successful bidder at a sheriff's  
6 24 sale may rescind the foreclosure action by filing a notice of  
6 25 rescission with the clerk of court in the county in which the  
6 26 property is located along with a filing fee of fifty dollars.  
6 27 In addition, such person shall pay a fee of twenty-five  
6 28 dollars for documents filed in the foreclosure action. Upon  
6 29 the filing of the notice of rescission, the mortgage loan shall  
6 30 be enforceable according to the original terms of the  
6 31 foreclosure. However, any findings of fact or law in the  
6 32 rescission action shall be preclusive for purposes of any future  
6 33 action unless the court, upon hearing, rules otherwise in the  
6 34 rescission action. The mortgagor shall be assessed costs,  
6 35 including reasonable attorney fees, of foreclosure and  
7 1 rescission if provided by the mortgage agreement.

7 2 Sec. 13. NEW SECTION. 654.17A SALE FREE OF LIENS.

7 3 At any time during the pendency of the foreclosure, the  
7 4 plaintiff, with the written consent of the equitable  
7 5 titleholders, may apply to the court for an order authorizing

7 6 a commercially reasonable sale of the property free of the  
7 7 claims of the parties to the action and other persons served  
7 8 with notice pursuant to section 654.15B. The court may grant  
7 9 the motion unless a party in interest objects in writing  
7 10 during such time as the court may prescribe. A person filing  
7 11 an objection with a claim junior to the plaintiff shall either  
7 12 apply for assignment of senior claims pursuant to section  
7 13 654.8 or otherwise provide adequate protection to senior  
7 14 creditors. Pending resolution of the rights of the parties  
7 15 and persons served with notice pursuant to section 654.15B,  
7 16 the court shall place the net proceeds of the sale in escrow  
7 17 after payment of reasonable closing costs. The rights of such  
7 18 persons to the escrowed funds shall be determined in the same  
7 19 manner as their rights to the property that was sold.

7 20 Sec. 14. 655A.3, Code 2005, is amended by adding the  
7 21 following new subsection:

7 22 NEW SUBSECTION. 2A. The mortgagor may file a written  
7 23 notice required in subsection 1 together with proof of service  
7 24 on the mortgagee with the recorder of the county where the  
7 25 mortgaged property is located. Such a filing shall have the  
7 26 same force and effect on third parties as an indexed notation  
7 27 entered by the clerk of the district court pursuant to section  
7 28 617.10.

7 29 Sec. 15. Section 655.4, Code 2005, is repealed.

7 30 EXPLANATION

7 31 This bill relates to civil actions and the foreclosure of  
7 32 real estate mortgages, and provides for certain fees.

7 33 The bill specifies that a mortgagee's two-year statute of  
7 34 limitation period in which to commence a foreclosure action  
7 35 after judgment shall be exclusive of any time during which  
8 1 execution on the judgment was stayed pending a bankruptcy  
8 2 action.

8 3 The bill specifies that an action shall not be brought to  
8 4 renew or extend a judgment unless by a voluntary written  
8 5 stipulation of a judgment creditor and the equitable  
8 6 titleholders.

8 7 The bill provides that if a case file has been sealed by  
8 8 the court, or if by law the court records in a case are not  
8 9 available to the general public, any judgments entered in the  
8 10 case shall not be a lien on real property until the identity  
8 11 of the judgment creditor and the amount of the judgment, as  
8 12 well as any payments made on the judgment, become public  
8 13 record.

8 14 The bill provides for certain notice requirements for  
8 15 persons intentionally evading service of process in a case in  
8 16 which a debtor is in actual possession of land.

8 17 The bill provides that, in regard to the execution of  
8 18 certain judgments, a junior creditor who has appeared in a  
8 19 foreclosure action may submit a written bid that meets certain  
8 20 requirements.

8 21 The bill provides that a mortgagor who has been  
8 22 substantially prejudiced by a mortgagee's failure to provide  
8 23 notice of a right to cure may, by motion, request additional  
8 24 time in which to cure any outstanding defaults on the mortgage  
8 25 and the court may dismiss the foreclosure without prejudice  
8 26 and assess costs against the mortgagee.

8 27 The bill provides that unless a mortgagor attaches  
8 28 conditions to a payment made during foreclosure, the mortgagee  
8 29 shall apply any payments received during the foreclosure as  
8 30 provided in the mortgage loan agreement and that such applied  
8 31 payments shall not extinguish the mortgagee's right to  
8 32 continue the foreclosure in regard to any unpaid amounts.

8 33 The bill provides that at any time prior to the court's  
8 34 decree in a foreclosure action, the plaintiff, or a person  
8 35 guaranteeing title of the plaintiff's mortgage may post a bond  
9 1 not less than twice the amount of the claim with sureties to  
9 2 be approved by the clerk of court and apply to the court to  
9 3 release the claim against the property of any person claiming  
9 4 a lien superior to that of the plaintiff in the property  
9 5 subject to foreclosure. The bill provides that notice of the  
9 6 bond and the court's order of release shall be served on the  
9 7 claimant and unless the claimant has appeared in the  
9 8 foreclosure action, the service shall be by personal service.  
9 9 Unless the claimant files an action on the bond within 12  
9 10 months from service of the notice, the claimant shall be  
9 11 barred from any further remedy. In a successful action on the  
9 12 bond, the court may award the claimant reasonable attorney  
9 13 fees.

9 14 The bill provides that a junior creditor may file and serve  
9 15 on the judgment creditor a request for notice of the sheriff's  
9 16 sale prior to the date of sale and the attorney for the

9 17 judgment creditor shall file proof of service of such notice.  
9 18 Upon motion, the court may set aside a sale in which a junior  
9 19 creditor who requests notice is damaged by the failure to give  
9 20 notice.

9 21 The bill provides that a lender may serve a nontitleholding  
9 22 claimant in a foreclosure action with notice in substantially  
9 23 the form prescribed in the bill advising the claimant that the  
9 24 property that is the subject of the foreclosure action shall  
9 25 be foreclosed, describing the claimant's interest in the  
9 26 action and that unless such claimant intervenes in the  
9 27 foreclosure action such claimant shall lose the claimant's  
9 28 interest in the mortgaged property, and that the court may  
9 29 adjudicate the claimant's rights against the property as if  
9 30 the claimant had been added as a defendant and default had  
9 31 been entered against the defendant.

9 32 The bill provides that at any time prior to the recording  
9 33 of the sheriff's deed, a judgment creditor or a successful  
9 34 bidder at a sheriff's sale may rescind the foreclosure action  
9 35 by filing a notice of rescision with the clerk of court in the  
10 1 county in which the property is located along with a filing  
10 2 fee. In addition, such person shall pay a filing fee for  
10 3 documents previously filed in the foreclosure action. Upon  
10 4 the filing of the notice of rescision, the mortgage loan shall  
10 5 be enforceable according to the original terms of the  
10 6 foreclosure. However, any findings of fact or law in the  
10 7 rescision action shall be preclusive for purposes of any future  
10 8 action unless the court, upon hearing, rules otherwise in the  
10 9 rescision action. The mortgagor shall be assessed costs,  
10 10 including reasonable attorney fees, of foreclosure and  
10 11 rescision if provided by the mortgage agreement.

10 12 The bill provides that at any time during the pendency of  
10 13 the foreclosure, the plaintiff, with the written consent of  
10 14 the equitable titleholders, may apply to the court for an  
10 15 order authorizing a commercially reasonable sale of the  
10 16 property free of the claims of the parties to the action and  
10 17 other persons served with notice.

10 18 The bill provides that a mortgagor may file a written  
10 19 notice together with proof of service on the mortgagee with  
10 20 the recorder of the county where the mortgaged property is  
10 21 located. Such a filing shall have the same force and effect  
10 22 on third parties as an indexed notation entered by the clerk  
10 23 of the district court pursuant to Code section 617.10.

10 24 The bill repeals Code section 655.4, relating to a clerk of  
10 25 court's entry of judgment of foreclosure referring to the  
10 26 mortgage and acknowledging that the mortgage was foreclosed  
10 27 and giving the date of the decree.

10 28 LSB 5463YC 81

10 29 rh:rj/je/5